of leave to sign final judgment. It is said that the learned judge ought to have held that there was a triable issue in this case and given unconditional leave to defend. It is further said that the learned judge ought not to have acceded to the application to sign final judgment, as the appellant had shown a good defence on the merits. It is next said that the procedure under O.14 of the Rules of the Supreme Court for leave to sign final judgment could not be applied here, as the amounts claimed by the plaintiff were not final and conclusive.

I do not think there is any merit in any of the above arguments. To my mind, the learned judge did not err in law in holding that section 106(3) of the Income Tax Act, 1967 prevented him from entertaining the defence set up by the appellant. In this connection I need say no more than to reiterate what I said in *Sun Man's* case, namely, that there is a string of decided cases in which it has been held that the effect of the relevant provisions of the Income Tax Act is that on the service of a notice of assessment on the person assessed the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, which can then be recovered by the Government by civil proceedings as a debt due to the Government, and that on such civil proceedings being brought by the Government the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased. Nothing which has been said by learned counsel for the appellant in this appeal would justify my entertaining any doubt as to the correctness of what I said in that case.

The major ground of appeal is that the learned judge erred in law on the construction of the term "in accordance with law" in Article 13(1) of the Constitution of Malaysia. In my judgment this ground is equally untenable. So far as the power of taxation is concerned, the Constitution recognizes no fundamental right to immunity from taxation and that is presumably the reason why no constitutional protection is provided against the exercise of that power. Taxation is an independent power of the State. The result is that whenever a competent Legislature enacts a law in the exercise of any of its legislative powers, destroying or otherwise depriving a man of his property, the latter is precluded from questioning its reasonableness by invoking Article 13(1) of the Constitution, however arbitrary the law might palpably be. There is indeed nothing arbitrary about imposing income tax for the purpose of raising revenue. It is contended for the appellant that he does not complain about taxation as such but about the method of recovery of such tax. So long as the method of recovery is laid down by the law, I do not see how it can be challenged. Indeed, the law does provide for an appeal against taxation to a separate tribunal from which there is further right of appeal to the High Court by way of a case stated.

I would dismiss this appeal with costs.

Ong Hock Sim and **Wan Suleiman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Datuk S. P. Seenivasagam & Co.*

DIRECTOR-GENERAL OF INLAND REVENUE v. L.T.S.

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Wan Suleiman F.JJ.) March 6, 1975]

[Penang — Federal Court Civil Appeal No. 64 of 1974]

Income Tax — Outgoings and expenses wholly and exclusively incurred in production of income — Taxpayer transferee of permit holders for extraction of timber — Assignment of permit illegal — Royalties paid to State Government for extraction of timber — Whether deductible — Income Tax Act, 1967, ss. 33 and 39.

This was an appeal from the decision of Chang Min Tat J. ([1974] 1 M.L.J. 187). The respondent in this case was a transferee of the permit holders for the extraction of timber. Chang Min Tat J. held that although the purported assignments of the permit were illegal and unenforceable, the respondent was entitled to deduct the sums paid by him as royalties to the Government of Kedah on behalf of the permit holders as his outgoings and expenses wholly and exclusively incurred for the production of the income. The Director-General of Inland Revenue appealed and it was contended that as the royalties were not payable by the respondent, he was not entitled to claim deduction in respect of the payments.

Held, dismissing the appeal: as it was not in dispute that the respondent in fact paid the royalties out of his gross income from the timber extracted under his agreements with the permit holders and as they were in fact paid to the State Government they were not caught by section 39(1)(g) of the Income Tax Act, 1967, and were therefore deductible.

FEDERAL COURT.

Mohammad bin Haji Said (Federal Counsel) for the appellant.

Tan Phock Kin for the respondent.

Gill C.J.: The respondent is a timber merchant carrying on business under the firm name of Guan Lee of which he is the sole proprietor. In 1968 he obtained from the Government of Kedah a permit to extract timber from a forest area in the State. In the same year, two other persons named Encik Ismail bin Mohamed Noor and Encik Mahmood bin Haji Abdullah (hereinafter referred to as the "permit-holders") also obtained similar permits. Condition 1 of the permits issued to them stipulated that the permit-holder shall not transfer any of his rights, obligations or liabilities under the permit to any other person or persons by power of attorney or in any other manner, except with the permission in writing of the State Forest Officer.

By agreements dated May 19, 1968 the permit-holders agreed and undertook to "sub-contract" out the forest lands comprised in their respective permits to the respondent, together with the right to collect, extract and take delivery of timber therefrom. In return the respondent agreed to pay the permit-holders $1 for every ton of timber extracted. Under further agreement dated May 26, 1968 the respondent agreed to pay on behalf of the permit-holders all royalties, premiums and any fines which might be imposed by the Forest Department. During the basis year for the year of assessment 1970, the respondent paid the permit-holders a total sum of $5.586 by way of commission, and he paid the Government of Kedah, in the names of the permit-holders, the sums of $36.600 and $42.000 respectively as royalties. In computing the respondent's adjusted income for that year of assessment, the Director-General of Inland Revenue (the appellant) disallowed those sums as items of expenditure.

On an appeal by the respondent against such disallowance by the appellant, the Special Commissioners of Income Tax held those items of expenditure to be deductible under section 33(1) of the Income Tax Act, 1967 as expenses wholly and exclusively incurred in the production of the respondent's gross income, and made an order for the respondent's income tax to be amended accordingly. On a further appeal by the appellant by way of case stated to the High Court, Chang Min Tat J. decided that the commission paid by the respondent to the permit holders was not deductible, but that the royalties which he paid to the Government in the names of the permit-holders were allowable deductions under section 33(1) of the Act. It is from the latter part of the learned judge's decision that the appellant has appealed to this court.

At the hearing before the Special Commissioners, it was contended on behalf of the appellant that the Department of Inland Revenue and the Forest Department were not bound by the agreements between the permit holders and the respondent, as they were entered into in clear breach of the terms of the permits. The Commissioners rejected that contention as they formed the opinion that, although the agreements might not be valid as against the Government of Kedah, they were not illegal as between the respondent and the permit holders. The learned judge in the High Court, however, took the view that there could be no doubt of the illegality of the agreements, whether viewed in relation to the Government or as between the parties.

The question to be determined in this appeal is whether the learned judge was right in holding that the royalties paid by the respondent are allowable deductions from the gross income which he made in extracting timber under the agreements with the permit holders. The determination of this question, as rightly pointed out by the learned judge, depends on the interpretation of sections 33 and 39 of the Act. Section 33(1) deals with deductions which are allowed. Section 39 refers to deductions which are not allowed. The deductions specified under section 39(1)(a) to (f) are not relevant to this appeal. What is relevant is section 39(1)(g) which speaks of "any sum, by whatever name called, payable (otherwise than to a State Government) for the use of a licence or permit to extract timber from a forest in Malaysia". Section 39(2) provides as follows:—

"It is hereby declared that section 33, except in so far as it relates to expenses of the kind specified in sub-section (1)(a) to (d) thereof, is not an express provision of this Act within the meaning of this section."

The learned judge interpreted section 39(2) to mean that the deductions allowed by section 33 in respect of expenses wholly and exclusively incurred in the production of gross income do not extend to the expenses mentioned in section 39(1)(a) to (g). He therefore went on to hold that the sum paid by the respondent to the permit holders by way of commission, being a sum not payable to the State Government, was caught by section 39(1)(g) of the Act and was thus not deductible. Against that part of the learned judge's judgment there is no appeal. The learned judge further held that the sums paid to the Government of the State of Kedah in respect of royalties were deductible under the relief provided by the words "otherwise than to a State Government" in section 39(1)(g).

It is contended on behalf of the appellant that the learned judge failed to consider whether the payments in respect of royalties are excluded by section 39(1)(g) in the same way as the commission. This contention is based on the argument that the word "payable" in section 39(1)(g) must be read in conjunction with the permits under which the obligation to pay the royalties was on the permit-holders and not any other person. In other words, it is said that only if the permit-holders themselves had extracted timber, the royalties paid by them would be allowable deductions from their gross income as they would then not be caught by section 39(1)(g). It is further contended that as the royalties were paid by the respondent, even though they were paid in the names of the permit holders, they are caught by section 39(1)(g) as they were not payable by him. It is lastly contended that whatever was paid by the respondent to the Government was in effect a payment to the permit-holders.

It is common ground that the income on which the respondent was assessed was income which he had earned by extracting timber under his agreements with the permit-holders. Those agreements were clearly tainted with illegality. What the appellant is saying in effect is that, whereas income earned by virtue of an illegal contract is taxable, the expenses which were wholly and exclusively incurred in the production of that income cannot be allowed by reason of the illegality of the contracts. The view which the Commissioners took was that the royalties paid by the respondent, albeit in the names of the permit-holders, were nonetheless sums payable to the Government of Kedah for the use of permits to extract timber from a forest in Malaysia within the meaning of section 39(1)(g) of the Act. They were thus outgoings or expenses wholly or exclusively incurred in the production of the respondent's gross income within the meaning of section 33(1) of the Act. The learned judge in the court below took the view that it would not be entirely right to hold that to allow the payments made by the respondent as deductible expenses under the Act would be to give consideration to and entertain or enforce the illegal agreements.

I agree with respect with the view taken both by the Commissioners and the learned judge. In my opinion the question as regards illegality of the agreements is not material to the question to be decided in this appeal. As pointed out by learned counsel for the respondent, the Act makes no distinction between income earned legally and income earned illegally. It is not in dispute that the respondent in fact paid the royalties out of his gross income from the timber extracted under his agreements with the permit-holders. They were payments made to a State Government, and therefore are not caught by section 39(1)(g). There must surely be a distinction between what was paid to the permit-holders by way of commission for the use of their permits and what was paid to the Government by way of royalty.

I would dismiss the appeal with costs.

Ong Hock Sim and **Wan Suleiman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Thillaimuthu & Phock Kin.*